



EUROPEAN COMMISSION

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**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of **XXX****

**on [...]**

**supplementing Regulation (EU) No 575/2013 of the European Parliament and of  
the Council with regard to regulatory technical standards for Own Funds  
requirements for institutions**

## COMMISSION DELEGATED REGULATION (EU) No .../..

### supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions

#### THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012<sup>1</sup>, and in particular Articles 26(4) third subparagraph; 27(2) third subparagraph; 28(5) third subparagraph; 29(6) third subparagraph; 32(2) third subparagraph; 36(2) third subparagraph; 41(2) third subparagraph; 52(2) third subparagraph; 76(4) third subparagraph; 78(5) third subparagraph; 79(2) third subparagraph; 83(2) third subparagraph; 481(6) third subparagraph; 487(3) third subparagraph thereof,

Whereas:

- (1) The provisions in this Regulation are closely linked, since they refer to elements of own funds requirements of institutions and to deductions from these same elements of own funds for the application of Regulation (EU) No 575/2013. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is desirable to include all of the regulatory technical standards on own funds required by Regulation (EU) No 575/2013, in a single Regulation.
- (2) In order to bring more convergence across the EU in the way foreseeable dividends have to be deducted from interim or year-end profits, it is necessary to introduce a hierarchy of ways to evaluate the deduction: in the first place, a decision on distributions from the relevant body, second, the dividend policy, and third an historical payout ratio.
- (3) This requires, in addition to the general requirements for own funds as added to or amended by specific requirements laid down in terms of own funds for these types of institutions, a specification of conditions according to which competent authorities may determine that a type of undertaking recognized under applicable national law qualifies as a mutual, cooperative society, savings institution or similar institution for the purpose of own funds. This is to mitigate the risk that any institution could operate under the specific status of mutual, cooperative society, savings institution or similar institution to which specific own funds requirements may apply, where the institution does not possess features which are common to the European cooperative banking sector institutions.

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<sup>1</sup> OJ L 176, 27.6.2013, p. 1.

- (4) For an institution recognized under applicable national law as a mutual, cooperative society, savings institution or similar institution, it is appropriate in some cases to distinguish between the holders of the institution's Common Equity Tier 1 instruments and the members of such an institution since members generally need to hold capital instruments in order to be entitled to a right to dividends, as well as to a right to a part of the profits and reserves.
- (5) In general, the common feature of a cooperative, savings institution, mutual or similar institution is to carry on business for the benefit of the customers and members of the institution, and as service to the public. The primary objective is not to generate and pay a financial return to external providers of capital, like shareholders of joint stock companies. For this reason, capital instruments used by these institutions are different from capital instruments issued by joint stock companies that generally grant the holders a full access to reserves and profits in going concern and liquidation and are transferable to a third party.
- (6) With regard to cooperative institutions, a common feature is in general the ability of members to resign and therefore to require the redemption of the Common Equity Tier 1 capital instruments they hold. That does not prevent a cooperative society from issuing qualifying Common Equity Tier 1 capital instruments for which there is no possibility for the holders to put the instruments back to the institution, provided that these instruments meet the provisions of Article 29 of Regulation (EU) No 575/2013. Where an institution issues different types of instruments under Article 29 of Regulation (EU) No 575/2013, there should be no privileges assigned to only some of these types of instruments other than the ones foreseen in Recital 72 and Article 29(4) of Regulation (EU) No 575/2013.
- (7) Savings institutions are generally structured like a foundation where there is no owner of the capital, meaning nobody who participates in the capital and may benefit from the profits of the institution. One of the key feature of mutuals is that, in general, members do not contribute to the capital of the institution and do not, in the ordinary course of the business, benefit from direct distribution of the reserves. This should not prevent these institutions, in order to develop their business, from issuing Common Equity Tier 1 instruments to investors or members who may participate in the capital and benefit to some extent from the reserves in going concern situations and in liquidation.
- (8) It is understood that all existing institutions already set up and recognized as mutuals, cooperative societies, savings institutions or similar institutions under applicable national law before 31 December 2012 continue to be classified as such for the purpose of Part Two of Regulation (EU) No 575/2013 without regard to their legal form as long as they continue to meet the criteria that determined such recognition as one of those entities under applicable national law. If the future need arises to define in general which criteria have to be fulfilled to be recognized as a mutual, cooperative society, savings institution or similar institution, this Regulation does not constitute a predefinition for this case.
- (9) When defining situations which would qualify as indirect funding for all types of capital instruments it is more practical and comprehensive to do so by specifying the characteristics of the opposite concept, direct funding.

- (10) In order to apply own funds rules to the European cooperative banking sector which includes mutuals, cooperative societies, savings institutions and similar institutions, the specificities of such institutions have to be taken into account in an appropriate manner. Rules should be put in place to ensure, among others, that such institutions are able to limit the redemption of their capital instruments, where appropriate. Thus, where the refusal of the redemption of instruments is prohibited under applicable national law for these types of institutions, it is essential that the provisions governing the instruments give the institution the ability to defer their redemption and limit the amount to be redeemed. Further, given the importance of the ability to limit or defer redemption, competent authorities should have the power to limit the redemption of cooperative shares and institutions should document any decision to limit the redemption.
- (11) There is a need to define and align the treatment of the concept of gain on sale associated with a future margin income in the context of securitisation, with international practices (i.e. those defined by the Basel Committee on Banking Supervision) and ensure that no revocable gain on sale is included among the own funds of an institution, given the lack of its permanence.
- (12) In order to avoid regulatory arbitrage and ensure a harmonised application of the capital requirements rules in the EU, it is important to ensure that there is a uniform approach concerning the deduction from own funds of certain items like losses for the current financial year, deferred tax assets that rely on future profitability, and defined benefit pension fund assets.
- (13) In order to ensure consistency across the EU in the way incentives to redeem are assessed, it is necessary to provide a description of cases where an expectation is created that the instrument is likely to be redeemed. There is also a need to design rules leading to timely activation of loss absorbency mechanisms for hybrid instruments so as to consequently increase the loss absorbency of these instruments in the future. Further, given that instruments issued by special purpose entities give less certainty in prudential terms than directly issued instruments, the use of special purpose entities for indirect issuance of own funds has to be restricted and strictly framed.
- (14) It is necessary to balance the need between ensuring prudentially appropriate calculations of exposures of institutions to indirect holdings arising from index holdings, with the need to ensure this does not become overly burdensome for them, i.e. when these positions are not material.
- (15) A detailed and comprehensive process is deemed necessary for competent authorities to grant a supervisory permission for reducing own funds. Redemptions, reductions and repurchases of own funds instruments should not be announced to holders before the institution has obtained the prior approval of the relevant competent authority. Institutions should provide a detailed list of elements in order for the competent authority to be provided with all relevant information before deciding on granting its approval.
- (16) Temporary waivers for deduction from own funds are provided in order to accommodate and allow the application of financial assistance operation plans, where applicable. Therefore the duration of such waivers should not exceed the duration of financial assistance operation plans.

- (17) In order for special purposes entities to qualify for inclusion under the Additional Tier 1 and Tier 2 own funds items, the assets of the special purpose entities not invested in own funds instruments issued by institutions should remain minimal and insignificant. In order to achieve this, this amount of assets shall be capped by a limit expressed in relation to the average total assets of the special purpose entity.
- (18) Transitional provisions aim at allowing a smooth passage to the new regulatory framework, therefore it is important, when applying the transitional provisions for filters and deductions, that the treatment applied is consistent with the national rules transposing the previous EU regulatory regime, represented by Directives 2006/48/EC and 2006/49/EC.
- (19) Excess Common Equity Tier 1 or Additional Tier 1 instruments grandfathered according to the transitional provisions of Regulation (EU) No 575/2013 are, on the basis of these provisions, allowed to be included within the limits for grandfathered instruments for lower tiers of capital. This nevertheless cannot alter the limits for grandfathered instruments for lower tiers, therefore any inclusion in the grandfathering limits of the lower tier should only be possible if there is sufficient allowance in that lower tier. Finally, as these are excess instruments of the higher tier, it should be possible for those instruments to be later reclassified to a higher tier of capital.
- (20) This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (European Banking Authority) to the Commission.
- (21) The European Supervisory Authority (European Banking Authority) has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010,

HAS ADOPTED THIS REGULATION:

## **TITLE I**

### **Subject matter**

#### *Article 1*

#### *Subject matter*

This Regulation lays down uniform rules concerning:

- a) the meaning of foreseeable when determining whether foreseeable charges or dividends have been deducted from own funds according to Article 26(4) of Regulation (EU) No 575/2013;
- b) conditions according to which competent authorities may determine that a type of undertaking recognised under applicable national law qualifies as a

- mutual, cooperative society, savings institution or similar institution, according to Article 27(2) of Regulation (EU) No 575/2013;
- c) the applicable forms and nature of indirect funding of capital instruments, according to Article 28(5) of Regulation (EU) No 575/2013;
  - d) the nature of limitations on redemption necessary where the refusal by the institution of the redemption of own funds instruments is prohibited under applicable national law, according to Article 29(6) of Regulation (EU) No 575/2013;
  - e) the further specification of the concept of gain on sale according to Article 32(2) of Regulation (EU) No 575/2013;
  - f) the application of the deductions from Common Equity Tier 1 items and other deductions for Common Equity Tier 1, Additional Tier 1 and Tier 2 items according to Article 36(2) of Regulation (EU) No 575/2013;
  - g) the criteria according to which competent authorities shall permit institutions to reduce the amount of assets in the defined benefit pension fund, according to Article 41(2) of Regulation (EU) No 575/2013;
  - h) the form and nature of incentives to redeem, the nature of a write-up of an Additional Tier 1 instrument following a write-down of the principal amount on a temporary basis and the procedures and timing surrounding trigger events, features of instruments that could hinder recapitalisation and use of special purpose entities, according to Article 52(2) of Regulation (EU) No 575/2013;
  - i) the extent of conservatism required in estimates used as an alternative to the calculation of underlying exposures for indirect holdings arising from index holdings, according to Article 76(4) of Regulation (EU) No 575/2013;
  - j) certain detailed conditions that need to be met before a supervisory permission for reducing own funds can be given, and the relevant process, according to Article 78(5) of Regulation (EU) No 575/2013;
  - k) the conditions for a temporary waiver for deduction from own funds to be provided, according to Article 79(2) of Regulation (EU) No 575/2013;
  - l) the types of assets that can relate to the operations of a special purpose entity and the concepts of minimal and insignificant for the purposes of determining Qualifying Additional Tier 1 and Tier 2 capital issued by a special purpose entity according to Article 83(2) of Regulation (EU) No 575/2013;
  - m) the detailed conditions for adjustments to own funds under the transitional provisions, according to Article 481(6) of Regulation (EU) No 575/2013;
  - n) the conditions for items excluded from grandfathering in Common Equity Tier 1 or Additional Tier 1 items in other elements of own funds, according to Article 487(3) of Regulation (EU) No 575/2013.

## **TITLE II**

### **Elements of Own Funds**

#### *Chapter 1*

#### *Common Equity Tier 1 capital*

##### Section 1

##### Common Equity Tier 1 items and instruments

##### *Article 2*

##### *Meaning of foreseeable charge or dividend under Article 26(2)(b) of Regulation (EU) No 575/2013*

1. The amount of foreseeable dividends to be deducted by institutions from the interim or year-end profits as provided in Article 26(2) of Regulation (EU) No 575/2013, shall be determined in accordance with paragraphs 2, 3 and 4.
2. Where an institution's management body has formally taken a decision or proposed a decision to the institution's relevant body regarding the amount of dividends to be distributed, this amount shall be deducted from the corresponding interim or year-end profits.
3. Where interim dividends are paid, the residual amount of interim profit resulting from the calculation laid down in paragraph 2 which is to be added to Common Equity Tier 1 capital shall be reduced, taking into account the rules laid down in paragraphs 2 and 4, by the amount of any foreseeable dividend which can be expected to be paid out from that residual interim profit with the final dividends for the full business year.
4. Before the management body has formally taken a decision or proposed a decision to the relevant body on the distribution of dividends, the amount of foreseeable dividends to be deducted by institutions from the interim or year-end profits shall equal the amount of interim or year-end profits multiplied by the dividend payout ratio.
5. The dividend payout ratio shall be determined on the basis of the dividend policy approved by the management body or other relevant body.

Where the dividend policy contains a payout range instead of a fixed value, the upper end of the range is to be used for the purpose of paragraph 2.

In the absence of an approved dividend policy, or when, in the opinion of the competent authority, it is likely that the institution will not apply its dividend policy or this policy is not a prudent basis upon which to determine the amount of deduction, the dividend payout ratio shall be based on the highest of the following:

- (a) the average dividend payout ratios over the three years prior to the year under consideration;
- (b) the dividend payout ratio of the year preceding the year under consideration.

The competent authority may permit the institution to adjust the calculation of the dividend payout ratio as described in points (a) and (b) to exclude exceptional dividends paid during the period.

- 6. The amount of foreseeable dividends to be deducted shall be determined taking into account any regulatory restrictions on distributions, in particular restrictions determined in accordance with Article 141 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC. The amount of profit after deduction of foreseeable charges subject to such restrictions may be included fully in Common Equity Tier 1 capital where the condition of point (a) of Article 26(2) of Regulation (EU) No 575/2013 is met. When such restrictions are applicable, the foreseeable dividends to be deducted shall be based on the capital conservation plan agreed by the competent authority pursuant to Article 142 of Directive 2013/36/EU.
- 7. The amount of foreseeable dividends to be paid in a form that does not reduce the amount of Common Equity Tier 1 capital shall not be deducted from interim or year-end profits to be included in Common Equity Tier 1 capital.
- 8. The amount of foreseeable charges to be taken into account shall comprise the following:
  - (a) the amount of taxes;
  - (b) the amount of any obligations or circumstances arising during the related reporting period which are likely to reduce the profits of the institution and for which the competent authority is not satisfied that all necessary value adjustments, such as additional value adjustments according to

Article 34 of Regulation (EU) No 575/2013, or provisions have been made.

9. Foreseeable charges that have not already be taken into account in the profit and loss account shall be assigned to the interim period during which they have incurred so that each interim period bears a reasonable amount of these charges. Material or non-recurrent events shall be considered in full and without delay in the interim period during which they arise.
10. The competent authority shall be satisfied that all necessary deductions to the interim or year-end profits and all those related to foreseeable charges have been made, either under applicable accounting framework or under any other adjustments, before permitting that the institution includes interim or year-end profits in Common Equity Tier 1 capital.

### *Article 3*

*Type of undertaking recognised under applicable national law as a cooperative society under Article 27(1)(a)(ii) of Regulation (EU) No 575/2013*

Competent authorities may determine that a type of undertaking recognised under applicable national law qualifies as a cooperative society for the purpose of Part Two of Regulation (EU) No 575/2013, where all of the following conditions are met:

(a) the institution's legal status falls under one of the following categories:

- *in Austria: institutions registered as 'eingetragene Genossenschaft (e.Gen.)' or 'registrierte Genossenschaft' under the 'Gesetz über Erwerbs- und Wirtschaftsgenossenschaften (GenG)';*
- *in Belgium: institutions registered as 'Société Coopérative/Cooperative Vennostchap' and approved in application of the Royal Decree of 8 January 1962 fixing the conditions of approval of the national groupings of cooperative societies and cooperative societies;*
- *in Cyprus: institutions registered as 'Συνεργατικό Πιστωτικό Ίδρυμα ή ΣΙΠ' established by virtue of the Cooperative Societies Laws of 1985;*
- *in Czech Republic: institutions authorised as 'spořitelni a úvěrni družstvo' under 'zákon upravující činnost spořitelních a úvěrních družstev';*
- *in Denmark: institutions registered as 'andelskasser' or 'sammenslutninger af andelskasser' under the Danish Financial Business Act;*
- *in Finland: institutions registered as*

- i. *‘Osuuspankki’ or ‘andelsbank’ under ‘laki osuuspankeista ja muista osuuskuntamuotoisista luottolaitoksista’ or ‘lag om andelsbanker och andra kreditinstitut i andelslagsform’*
  - ii. *‘Muu osuuskuntamuotoinen luottolaitos’ or ‘annat kreditinstitut i andelslagsform’ under ‘laki osuuspankeista ja muista osuuskuntamuotoisista luottolaitoksista’ or ‘lag om andelsbanker och andra kreditinstitut i andelslagsform’*
  - iii. *‘Keskusyhteisö’ or ‘centralinstitutet’ under ‘laki talletuspankkien yhteenliittymästä’ or ‘lag om en sammanslutning av inlåningsbanker’;*
- *in France: institutions registered as ‘sociétés coopératives’ under the ‘Loi n°47-1775 du 10 septembre 1947 portant statut de la coopération’ and authorised as ‘banques mutualistes ou coopératives’ under the ‘Code monétaire et financier, partie législative, Livre V, titre Ier, chapitre II’ ;*
  - *in Germany: institutions registered as ‘eingetragene Genossenschaft (eG)’ under the ‘Gesetz betreffend die Erwerbs- und Wirtschaftsgenossenschaften (Genossenschaftsgesetz –GenG)’;*
  - *in Greece: institutions registered as ‘Πιστωτικοί Συνεταιρισμοί’ under the Cooperative Law 1667/1986 that operate as credit institutions and may be labeled as ‘Συνεταιριστική Τράπεζα’ according to the Banking Law 3601/2007;*
  - *in Hungary: institutions registered as ‘Szövetkezeti hitelintézet’ under Act CXII of 1996 on Credit Institutions and Financial Enterprises;*
  - *in Italy: institutions registered as*
    - i. *‘Banche popolari’ referred to in Legislative Decree 1st September 1993, no. 385;*
    - ii. *‘Banche di credito cooperativo’ referred to in Legislative Decree 1st September 1993, no. 385;*
    - iii. *‘Banche di garanzia collettiva dei fidi’ referred to in art. 13 of Decree Law 30 September 2003, no. 269, converted into Law 24th November 2003, no. 326;*
  - *in Luxembourg: institutions registered as ‘Sociétés coopératives’ as defined in Section VI of the law of 10 August 1915 on commercial companies;*
  - *in Netherlands: institutions registered as ‘Coöperaties’ or ‘onderlinge waarborgmaatschappijen’ under ‘Title 3 of Book 2 Rechtspersonen of the Burgerlijk wetboek’;*
  - *in Poland: institutions registered as ‘bank spółdzielczy’ under the provisions of ‘Prawo bankowe’;*
  - *in Portugal: institutions registered as ‘Caixa de Crédito Agrícola Mútuo’ or as ‘Caixa Central de Crédito Agrícola Mútuo’ under the ‘Regime Jurídico do Crédito Agrícola Mútuo e das Cooperativas de Crédito Agrícola’ approved by Decreto-Lei n.º 24/91, de 11 de Janeiro;*

- in Romania: institutions registered as ‘Organizații cooperatiste de credit’ under the provisions of Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, approved with amendments and supplements by Law no.227/2007;
- in Spain: Institutions registered as ‘Cooperativas de Crédito’ under the ‘Ley 13/1989, de 26 de mayo, de Cooperativas de Crédito’;
- in Sweden: institutions registered as ‘Medlemsbank’ under ‘Lag (1995:1570) om medlemsbanker’ or as ‘Kreditmarknadsförening’ under Lag (2004:297) om bank- och finansieringsrörelse;
- in the United Kingdom: institutions registered as ‘cooperative societies’ under the Industrial and Provident Societies Act 1965 and under the Industrial and Provident Societies Act (Northern Ireland) 1969;

- (b) with respect to Common Equity Tier 1 capital, the institution is able to issue, according to the national applicable law or company statutes, at the level of the legal entity, only capital instruments referred to in Article 29 of Regulation (EU) No 575/2013;
- (c) When the holders, which may be members or non members of the institution, of the Common Equity Tier 1 instruments referred to in paragraph (b) have the ability to resign, under the applicable national law, they may also have the right to put the capital instrument back to the institution, subject to the restrictions of the applicable national law, company statutes, of Regulation (EU) No 575/2013 and of this Regulation. This does not prevent the institution from issuing, under applicable national law, Common Equity Tier 1 instruments complying with Article 29 of Regulation (EU) No 575/2013 to members and non members that do not grant a right to put the capital instrument back to the institution.

#### *Article 4*

##### *Type of undertaking recognised under applicable national law as a savings institution under Article 27(1)(a)(iii) of Regulation (EU) No 575/2013*

Competent authorities may determine that a type of undertaking recognised under applicable national law qualifies as a savings institution for the purpose of Part Two of Regulation (EU) No 575/2013, where all of the following conditions are met:

- (a) the institution’s legal status falls under one of the following categories:

- in Austria: institutions registered as 'Sparkasse' under para. 1 (1) of the 'Bundesgesetz über die Ordnung des Sparkassenwesens (Sparkassengesetz – SpG)';
- in Denmark: institutions registered as 'Sparekasser' under the Danish Financial Business Act;
- in Finland: institutions registered as 'Säästöpankki' or 'Sparbank' under 'Säästöpankkilaki' or 'Sparbankslag';
- in Germany: institutions registered as 'Sparkasse' under
  - i. 'Sparkassengesetz für Baden-Württemberg (SpG)'
  - ii. 'Gesetz über die öffentlichen Sparkassen (Sparkassengesetz – SpkG) in Bayern'
  - iii. 'Gesetz über die Berliner Sparkasse und die Umwandlung der Landesbank Berlin – Girozentrale – in eine Aktiengesellschaft (Berliner Sparkassengesetz – SpkG)'
  - iv. 'Brandenburgisches Sparkassengesetz (BbgSpkG)'
  - v. 'Sparkassengesetz für öffentlich-rechtliche Sparkassen im Lande Bremen (Bremisches Sparkassengesetz)'
  - vi. 'Hessisches Sparkassengesetz'
  - vii. 'Sparkassengesetz des Landes Mecklenburg-Vorpommern (SpkG)'
  - viii. 'Niedersächsisches Sparkassengesetz (NSpG)'
  - ix. 'Sparkassengesetz Nordrhein-Westfalen (Sparkassengesetz – SpkG)'
  - x. 'Sparkassengesetz (SpkG) für Rheinland-Pfalz'
  - xi. 'Saarländisches Sparkassengesetz (SSpG)'
  - xii. 'Gesetz über die öffentlich-rechtlichen Kreditinstitute im Freistaat Sachsen und die Sachsen-Finanzgruppe'
  - xiii. 'Sparkassengesetz des Landes Sachsen-Anhalt (SpkG-LSA)'
  - xiv. 'Sparkassengesetz für das Land Schleswig-Holstein (Sparkassengesetz – SpkG)'
  - 'Thüringer Sparkassengesetz (ThürSpkG)';
- in Spain: institutions registered as 'Cajas de Ahorros' under 'Real Decreto-Ley 2532/1929, de 21 de noviembre, sobre Régimen del Ahorro Popular';
- in Sweden: institutions registered as 'Sparbank' under 'Sparbankslag (1987:619)';

- (b) with respect to Common Equity Tier 1 capital, the institution is able to issue, according to national applicable law or company statutes, at the level of the legal entity, only capital instruments referred to in Article 29 of Regulation (EU) No 575/2013;
- (c) the sum of capital, reserves and interim or year-end profits, is not allowed, according to national applicable law, to be distributed to holders of Common Equity Tier 1 instruments. Such condition is deemed to be fulfilled even where the institution issues Common Equity Tier 1 instruments that grant the holders, on a going concern basis, a right to a

part of the profits and reserves, where allowed by the applicable national law, provided that this part is proportionate to their contribution to the capital and reserves or, where permitted by the applicable national law, in accordance with an alternative arrangement. The institution may issue Common Equity Tier 1 instruments that grant the holders, in the case of insolvency or liquidation of the institution, the right to reserves which do not need to be proportionate to the contribution to capital and reserves provided that the conditions of Article 29(4) and (5) of Regulation (EU) No 575/2013 are met.

#### Article 5

##### *Type of undertaking recognised under applicable national law as a mutual under Article 27(1)(a)(i) of Regulation (EU) No 575/2013*

Competent authorities may determine that a type of undertaking recognised under applicable national law qualifies as a mutual for the purpose of Part Two of Regulation (EU) No 575/2013, where all of the following conditions are met:

(a) the institution's legal status falls under one of the following categories:

- *in Denmark: Associations ('Foreninger') or funds ('Fonde') which originate from the conversion of insurance companies ('Forsikringselskaber'), mortgage credit institutions ('Realkreditinstitutter'), savings banks ('Sparekasser'), cooperative savings banks ('Andelskasser') and affiliations of cooperative savings banks ('Sammenslutninger af andelskasser') into limited companies as defined under the Danish financial Business Act;*

- *in Ireland: institutions registered as 'building societies' under the Building Societies Act 1989;*

- *in the United Kingdom: institutions registered as 'building societies' under the Building Societies Act 1986; institutions registered as a 'savings bank' under the Savings Bank (Scotland) Act 1819.*

(b) with respect to Common Equity Tier 1 capital, the institution is only allowed to issue, according to the national applicable law or company statutes, at the level of the legal entity, capital instruments referred to in Article 29 of Regulation (EU) No 575/2013;

(c) the total amount or a partial amount of the sum of capital and reserves is owned by members of the institution, who do not, in the ordinary course of business, benefit from direct distribution of the reserves, in particular

through the payment of dividends. Such conditions are deemed to be fulfilled even where the institution issues Common Equity Tier 1 instruments that grant a right on the profits and reserves, where allowed by the applicable national law.

#### Article 6

##### *Type of undertaking recognised under applicable national law as a similar institution under Article 27(1)(a)(iv) of Regulation (EU) No 575/2013*

Competent authorities may determine that a type of undertaking recognised under applicable national law qualifies as a similar institution to cooperatives, mutuals and savings institutions for the purpose of Part Two of Regulation (EU) No 575/2013, where all of the following conditions are met:

- (a) the institution's legal status falls under one of the following categories:
  - *in Austria: the 'Pfandbriefstelle der österreichischen Landes-Hypothekenbanken' under the 'Bundesgesetz über die Pfandbriefstelle der österreichischen Landes-Hypothekenbanken (Pfandbriefstelle-Gesetz – PfBrStG)';*
  - *in Finland: institutions registered as 'Hypoteekkiyhdistys' or 'Hypoteksförening' under 'Laki hypoteekkiyhdistyksistä' or 'Lag om hypoteksföreningar';*
- (b) with respect to Common Equity Tier 1 capital, the institution is only able to issue, under statutory terms, at the level of the legal entity, capital instruments referred to in Article 29 of Regulation (EU) No 575/2013;
- (c) one or more of the following criteria are met:
  - (i) When the holders, which may be members or non members of the institution, of the Common Equity Tier 1 instruments referred to in paragraph (b) have the ability to resign under the applicable national law, they may also have the right to put the capital instrument back to the institution, subject to the restrictions of the applicable national law, company statutes and of Regulation (EU) No 575/2013 and this Regulation. This does not prevent the institution from issuing, under applicable national law, Common Equity Tier 1 instruments complying with Article 29 of Regulation (EU) No 575/2013 to members and non-members that do not grant a right to put the capital instrument back to the institution;

(ii) the sum of capital, reserves and interim or year-end profits, is not allowed, according to national applicable law, to be distributed to holders of Common Equity Tier 1 instruments. Such condition is deemed to be fulfilled even where the institution issues Common Equity Tier 1 instruments that grant the holders, on a going concern basis, a right to a part of the profits and reserves, where allowed by the applicable national law, provided that this part is proportionate to their contribution to the capital and reserves or, where permitted by the applicable national law, in accordance with an alternative arrangement. The institution may issue Common Equity Tier 1 instruments that grant the holders, in the case of insolvency or liquidation of the institution, the right to reserves which do not need to be proportionate to the contribution to capital and reserves provided that the conditions of article 29(4) and (5) of Regulation (EU) No 575/2013 are met.

(iii) the total amount or a partial amount of the sum of capital and reserves is owned by members of the institution who do not, in the ordinary course of business, benefit from direct distribution of the reserves, in particular through the payment of dividends.

#### *Article 7*

#### *Applicable forms and nature of indirect funding of capital instruments under Article 28(1)(b) and 52(1)(c) of Regulation (EU) No 575/2013*

1. Indirect funding of capital instruments under Article 28(1)(b) and Article 52(1)(c) of Regulation (EU) No 575/2013 shall be deemed funding that is not direct.
2. For the purposes of paragraph 1, direct funding shall refer to situations where an institution has granted a loan or other funding in any form to an investor that is used for the purchase of its capital instruments.
3. Direct funding shall also include funding granted for other purposes than purchasing an institution's capital instruments, to any natural or legal person who has a qualifying holding in the credit institution, as referred to in Article 4(36) of Regulation (EU) No 575/2013, or who is deemed to be a related party within the meaning of the definitions in paragraph 9 of International Accounting Standard 24 on Related Party Disclosures as applied in the EU according to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards<sup>2</sup>, taking into account any additional guidance as defined by the competent authority, if the institution is not able to demonstrate all of the following:

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<sup>2</sup> OJ L 243, 11.9.2002, p. 1.

- (a) the transaction is realised at similar conditions as other transactions with third parties;
  - (b) the natural or legal person or the related party does not have to rely on the distributions or on the sale of the capital instruments held to support the payment of interest and the repayment of the funding.
4. The applicable forms and nature of indirect funding of the purchase of an institution's capital instruments shall include the following:
- (a) funding of an investor's purchase, at issuance or thereafter, of an institution's capital instruments by any entities on which the institution has a direct or indirect control or by entities included in any of the following:
    - (i) the scope of accounting or prudential consolidation of the institution;
    - (ii) the institutional protection scheme or the network of institutions affiliated to a central body that are not organized as a group to which the institution belongs;
    - (iii) the scope of supplementary supervision of the institution in accordance with Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.
  - (b) funding of an investor's purchase, at issuance or thereafter, of an institution's capital instruments by external entities that are protected by a guarantee or by the use of a credit derivative or are secured in some other way so that the credit risk is transferred to the institution or to any entities on which the institution has a direct or indirect control or any entities included in any of the following:
    - (i) the scope of accounting or prudential consolidation of the institution;
    - (ii) the institutional protection scheme or the network of institutions affiliated to a central body that are not organized as a group to which the institution belongs;
    - (iii) the scope of supplementary supervision of the institution in accordance with Directive 2002/87/EC.
  - (c) funding of a borrower that passes the funding on to the ultimate investor for the purchase, at issuance or thereafter, of an institution's capital instruments.

5. In order for the above cases to be considered as indirect funding, where applicable, the following conditions shall also be met:
  - (a) the investor is not included in any of the following:
    - (i) the scope of accounting or prudential consolidation of the institution;
    - (ii) the institutional protection scheme or the network of institutions affiliated to a central body that are not organized as a group to which the institution belongs;
    - (iii) the scope of the supplementary supervision of the institution in accordance with Directive 2002/87/EC;
  - (b) the external entity is not included in any of the following:
    - (i) the scope of accounting or prudential consolidation of the institution;
    - (ii) the institutional protection scheme or the network of institutions affiliated to a central body that are not organized as a group to which the institution belongs;
    - (iii) the scope of the supplementary supervision of the institution in accordance with Directive 2002/87/EC.
6. Where direct or indirect funding of the purchase of a capital instrument has been individually assessed for impairment and an impairment allowance has been made, the amount to be excluded from the own funds of the institution shall be net of the impairment allowance.
7. In order to avoid a qualification of direct or indirect funding and where the loan or other form of funding or guarantees is granted to any natural or legal person who has a qualifying holding in the credit institution or who is deemed to be a related party as referred to in paragraph 3, the institution shall ensure on an ongoing basis that it has not provided the loan or other form of funding or guarantees for the purpose of subscribing directly or indirectly capital instruments of the institution. Where the loan or other form of funding or guarantees is granted to other types of parties, the institution shall make this control on a best effort basis.
8. With regard to mutuals, cooperative societies and similar institutions, where there is an obligation under national law or the statutes of the institution for a customer to subscribe capital instruments in order to receive a loan, that loan

shall not be considered as a direct or indirect funding where all of the following conditions are met:

- (a) the amount of the subscription is considered immaterial by the competent authority;
- (b) the purpose of the loan is not the purchase of capital instruments of the institution providing the loan;
- (c) the subscription of one or more capital instruments of the institution is necessary in order for the beneficiary of the loan to become a member of the mutual, cooperative society or similar institution.

#### *Article 8*

*Limitations on redemption of capital instruments issued by mutuals, savings institutions, cooperative societies and similar institutions under Article 29(2)(b) of Regulation (EU) No 575/2013 and Article 78(3) of Regulation (EU) No 575/2013*

1. An institution may issue Common Equity Tier 1 instruments with a possibility to redeem only where such possibility is foreseen by the applicable national law.
2. The ability of the institution to limit the redemption under the provisions governing capital instruments as referred to in point (b) of Article 29(2) and 78(3) of Regulation (EU) No 575/2013, shall encompass both the right to defer the redemption and the right to limit the amount to be redeemed. The institution shall be able to defer the redemption or limit the amount to be redeemed for an unlimited period of time pursuant to paragraph 3.
3. The extent of the limitations on redemption included in the provisions governing the instruments shall be determined by the institution on the basis of the prudential situation of the institution at any time, having regard to in particular, but not limited to:
  - (a) the overall financial, liquidity and solvency situation of the institution;
  - (b) the amount of Common Equity Tier 1 capital, Tier 1 and total capital compared to the total risk exposure amount calculated in accordance with the requirements laid down in point (a) of Article 92(1) of Regulation (EU) No 575/2013, the specific own funds requirements referred to in Article 104(1)(a) of Directive 2013/36/EU, the capital conservation buffer and institution specific countercyclical capital buffer, the systemically important institution buffer and the systemic

risk buffer referred to in Articles 129, 130, 131(4), 131(5) and 133 respectively of that Directive.

4. The limitations on redemption included in the contractual or legal provisions governing the instruments shall not prevent the competent authority from limiting further the redemption on the instruments on an appropriate basis as foreseen by Article 78 of Regulation (EU) No 575/2013.
5. Competent authorities shall assess the bases of limitations on redemption included in the contractual and legal provisions governing the instrument. They shall require institutions to modify the corresponding contractual provisions where they are not satisfied that the bases of limitations are appropriate. Where the instruments are governed by the national law in the absence of contractual provisions, the legislation shall enable the institution to limit redemption as described in this Article in order for the instruments to qualify as Common Equity Tier 1.
6. Any decision to limit redemption shall be documented internally and reported in writing by the institution to the competent authority, including the reasons why, in view of the criteria set out in paragraph 3, a redemption has been partially or fully refused or deferred.
7. Where several decisions to limit redemption are taking place in the same period of time, institutions may document these decisions in a single set of documents.

## **Section 2**

### **Prudential Filters**

#### *Article 9 - The concept of gain on sale under Article 32(1)(a) of Regulation (EU) No 575/2013*

1. The concept of gain on sale referred to in point (a) paragraph 1 of Article 32 of Regulation (EU) No 575/2013 shall mean any recognised gain on sale for the institution that is recorded as an increase in any element of own funds and is associated with future margin income arising from a sale of securitised assets when they are removed from the institution's balance sheet in the context of a securitisation transaction.
2. The recognised gain on sale shall be determined as the difference between (a) and (b) below as defined in the application of the relevant accounting framework:

- a. the net value of the assets received including any new asset obtained less any other asset given or any new liability assumed
  - b. and the carrying amount of the securitised assets or of the part derecognised.
3. The recognised gain on sale which is associated with the future margin income, shall refer, in this context, to the expected future 'excess spread' as defined in Article 242 of Regulation (EU) No 575/2013.

## Section 2

### Deductions from Common Equity Tier 1 items

#### *Article 10*

#### *Deduction of losses for the current financial year under Article 36(1)(a) of Regulation (EU) No 575/2013 and Article 26(1)(c) of Regulation (EU) No 575/2013*

1. For the purpose of calculating its Common Equity Tier 1 capital during the year, and irrespective of whether the institution closes its financial accounts at the end of each interim period, the institution shall determine its profit and loss accounts and deduct any resulting losses from Common Equity Tier 1 as they arise. Any resulting profit may be included only where the condition of point (a) of Article 26(2) of Regulation (EU) No 575/2013 is met.
2. For the purpose of paragraph 1, income and expenses shall be determined under the same process and on the basis of the same accounting standards as the one followed for the year-end financial report. Income and expenses shall be prudently estimated and shall be assigned to the interim period in which they incurred so that each interim period bears a reasonable amount of the anticipated annual income and expenses. Material or non-recurrent events shall be considered in full and without delay in the interim period during which they arise.
3. Where losses for the current financial year are included in Common Equity Tier 1 items as a result of an interim or a year-end financial report, a deduction is not needed. For the purpose of this Article, the financial report means that the profit and losses have been determined after a closing of the interim or the annual accounts in accordance with the accounting framework to which the institution is subject under Regulation 2002/1606/EC on the application of international accounting standards and Directive 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions.
4. Paragraphs 1, 2 and 3 shall apply in the same manner to gains and losses included in accumulated other comprehensive income.

### *Article 11*

#### *Deductions of deferred tax assets that rely on future profitability under Article 36(1)(c) of Regulation (EU) No 575/2013*

1. The deductions of deferred tax assets that rely on future profitability under Article 36(1)(c) of Regulation (EU) No 575/2013 shall be made according to paragraphs 2 to 3.
2. Associated deferred tax liabilities shall be limited to those that arise from the tax law of the same jurisdiction as the deferred tax assets. The offsetting between deferred tax assets and associated deferred tax liabilities shall be done separately for each taxable entity. For the calculation of deferred tax assets and liabilities at consolidated level, a taxable entity includes any number of entities which are members of the same tax group, fiscal consolidation, fiscal unity or consolidated tax return under applicable national law.
3. The amount of associated deferred tax liabilities which are eligible for offsetting deferred tax assets that rely on future profitability is the difference between (a) and (b) below:
  - (a) the amount of deferred tax liabilities as recognized under the applicable accounting framework;
  - (b) the amount of associated deferred tax liabilities arising from intangible assets and from defined benefit pension fund assets.

### *Article 12*

#### *Deduction of defined benefit pension fund assets under Article 36(1)(e) of Regulation (EU) No 575/2013 and Article 41(1)(b) of Regulation (EU) No 575/2013*

1. The competent authority shall only grant the prior permission mentioned in point (b) of Article 41(1) of Regulation (EU) No 575/2013 where the unrestricted ability to use the assets entails immediate and unfettered access to the assets such as when the use of the assets is not barred by a restriction of any kind and there are no claims of any kind from third parties on these assets.
2. Unfettered access to the assets is likely to exist when the institution is not required to request and receive specific approval from the manager of the pension funds or the pension beneficiaries each time it would access excess funds in the plan.

### *Article 13*

#### *Deductions of foreseeable tax charges under Article 36(1)(l) and Article 56(f) of Regulation (EU) No 575/2013*

1. On the condition that the institution applies accounting framework and accounting policies that provide for the full recognition of current and deferred tax liabilities related to transactions and other events recognized in the balance sheet or the profit and loss account, the institution may consider that foreseeable tax charges have been already taken into account. The competent authority shall be satisfied that all necessary deductions have been made, either under applicable accounting standards or under any other adjustments.
2. When the institution is calculating its Common Equity Tier 1 capital on the basis of financial statements prepared in accordance with Regulation (EC) No 1606/2002 of the EU Parliament and of the Council of 19 July 2002 on the application of international accounting standards, the condition of paragraph 1 is deemed to be fulfilled.
3. Where the condition of paragraph 1 is not fulfilled, the institution shall decrease its Common Equity Tier 1 by the estimated amount of current and deferred tax charges not yet recognized in the balance sheet and profit and loss account related to transactions and other events recognized in the balance sheet or the profit and loss account. The estimated amount of current and deferred tax charges shall be determined using an approach equivalent to the one provided by Regulation (EC) No 1606/2002. The estimated amount of deferred tax charges may not be netted against deferred tax assets that are not recognized in the financial statements.

### Section 3

#### Other deductions for Common Equity Tier 1, additional Tier 1 and Tier 2 items

### *Article 14*

#### *Other deductions for capital instruments of financial institutions under Article 36(3) of Regulation (EU) No 575/2013*

1. Holdings of capital instruments of financial institutions as defined in Article 4(26) of Regulation (EU) No 575/2013 shall be deducted as follows:

- (a) all instruments qualifying as capital under the company law applicable to the financial institution that issued them and, where the financial institution is subject to solvency requirements, which are included in the highest quality Tier of regulatory own funds without any limits shall be deducted from Common Equity Tier 1 capital;
  - (b) all instruments which qualify as capital under the company law applicable to the issuer and, where the financial institution is not subject to solvency requirements, which are perpetual, absorb the first and proportionately greatest share of losses as they occur, rank below all other claims in the event of insolvency and liquidation and have no preferential or predetermined distributions shall be deducted from Common Equity Tier 1 capital;
  - (c) any subordinated instruments absorbing losses on a going-concern basis, including the discretion to cancel coupon payments, shall be deducted from Additional Tier 1 capital. Where the amount of these subordinated instruments exceeds the amount of Additional Tier 1 capital, the excess amount shall be deducted from Common Equity Tier 1 capital;
  - (d) any other subordinated instruments shall be deducted from Tier 2 capital. If the amount of these subordinated instruments exceeds the amount of Tier 2 capital, the excess amount shall be deducted from Additional Tier 1 capital. Where the amount of Additional Tier 1 capital is insufficient, the remaining excess amount shall be deducted from Common Equity Tier 1 capital;
  - (e) any other instruments included in the financial institution's own funds pursuant to the relevant applicable prudential framework or any other instruments for which the institution is not able to demonstrate that conditions (a), (b), (c) or (d) apply shall be deducted from Common Equity Tier 1 capital.
2. The deductions referred to in paragraph 1 shall not apply in the following cases:
- (a) where the financial institution is authorized and supervised by a competent authority and subject to prudential requirements equivalent to those applied to institutions under Regulation (EU) No 575/2013. This approach shall be applied to third country financial institutions only where a coordinated equivalence assessment of the prudential regime of the third country concerned has been performed and where it

has been concluded that it is at least equivalent to that applied in the Union.

- (b) where the financial institution is an electronic money institution within the meaning of Article 2 of Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions<sup>3</sup> and does not benefit from optional exemptions as provided by Article 9 of that Directive;
  - (c) where the financial institution is a payment institution within the meaning of Article 4 of Directive 2007/64/EC on payment services in the internal market<sup>4</sup> and does not benefit from a waiver as provided by Article 26 of that Directive;
  - (d) where the financial institution is an alternative investment fund manager within the meaning of Article 4 of Directive 2011/61/EU on Alternative Investments Fund Managers<sup>5</sup> or a management company within the meaning of Article 2(1) of Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast)<sup>6</sup>.
3. In the cases foreseen in paragraph 2, institutions shall apply the deductions as foreseen by Regulation (EU) No 575/2013 for holdings of capital instruments based on a corresponding deduction approach. For the purposes of this paragraph, corresponding deduction approach shall mean an approach that applies the deduction to the same component of capital for which the capital would qualify if it was issued by the institution itself.

#### *Article 15*

#### *Capital instruments of third country insurance and reinsurance undertakings under Article 36(3) of Regulation (EU) No 575/2013*

1. Holdings of capital instruments of third country insurance and reinsurance undertakings that are subject to a prudential regime that either has been assessed as non-equivalent to the one provided by Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance<sup>7</sup> (Solvency II) (recast), or that has not been assessed, shall be deducted as follows:

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<sup>3</sup> OJ L 267, 10.10.2009, p. 7.

<sup>4</sup> OJ L 319, 5.12.2007, p. 1.

<sup>5</sup> OJ L 174, 1.7.2011, p. 1.

<sup>6</sup> OJ L 302, 17.11.2009, p. 32.

<sup>7</sup> OJ L 335, 17.12.2009, p. 1.

- (a) all instruments which qualify as capital under the company law applicable to the third country insurance and reinsurance undertakings that issued them, and which are included in the highest quality Tier of regulatory own funds without any limits shall be deducted from Common Equity Tier 1 capital;
  - (b) any subordinated instruments absorbing losses on a going-concern basis, including the discretion to cancel coupon payments, shall be deducted from Additional Tier 1 capital. Where the amount of these subordinated instruments exceeds the amount of Additional Tier 1 capital, the excess amount shall be deducted from Common Equity Tier 1 capital;
  - (c) any other subordinated instruments shall be deducted from Tier 2 capital. Where the amount of these subordinated instruments exceeds the amount of Tier 2 capital, the excess amount shall be deducted from Additional Tier 1 capital. Where the amount of Additional Tier 1 capital is insufficient, the remaining excess amount shall be deducted from Common Equity Tier 1 capital;
  - (d) for third country insurance and reinsurance undertakings that are subject to prudential solvency requirements, any other instruments included in the third country insurance and reinsurance undertakings' own funds pursuant to the relevant applicable prudential framework or any other instruments for which the institution is not able to demonstrate that conditions (a), (b) or (c) apply shall be deducted from Common Equity Tier 1 capital.
2. Where deductions are deductions of holdings of capital instruments of third country insurance and reinsurance undertakings whose prudential regime, including rules on own funds, has been assessed as equivalent to the prudential regime provided by Directive 2009/138/EC, items shall be treated as holdings of undertakings included in the scope of Directive 2009/138/EC.
  3. In the cases foreseen in paragraph 2 of this Article, institutions shall apply the deductions as foreseen by point (b) of Article 44, point (b) of Article 58 and point (b) of Article 68 of Regulation (EU) No 575/2013 for holdings of own funds insurance items.

*Article 16*

*Capital instruments of undertakings excluded from the scope of Directive 2009/138/EC under Article 36(3) of Regulation (EU) No 575/2013*

1. Holdings of capital instruments of undertakings excluded from the scope of Directive 2009/138/EC in accordance with Article 4 of that Directive shall be deducted as follows:
  - (a) all instruments qualifying as capital under the company law applicable to the undertaking that issued them and that are included in the highest quality Tier of regulatory own funds without any limits shall be deducted from Common Equity Tier 1 capital;
  - (b) any subordinated instruments absorbing losses on a going-concern basis, including the discretion to cancel coupon payments, shall be deducted from Additional Tier 1 capital. Where the amount of these subordinated instruments exceeds the amount of Additional Tier 1 capital, the excess amount shall be deducted from Common Equity Tier 1 capital;
  - (c) any other subordinated instruments shall be deducted from Tier 2 capital. If the amount of these subordinated instruments exceeds the amount of Tier 2 capital, the excess amount shall be deducted from Additional Tier 1 capital. Where the amount of Additional Tier 1 capital is insufficient, the remaining excess amount shall be deducted from Common Equity Tier 1 capital;
  - (d) any other instruments included in the undertaking's own funds pursuant to the relevant applicable prudential framework or any other instruments for which the institution is not able to demonstrate that conditions (a), (b) or (c) apply shall be deducted from Common Equity Tier 1 capital.
2. That deductions referred to in paragraph 1 shall not apply where these undertakings are subject, under national law, to provisions equivalent to provisions applicable to undertakings included in the scope of Directive 2009/138/EC. In such a case, capital instruments shall be treated as holdings of undertakings included in the scope of Directive 2009/138/EC.

Chapter 2  
Additional Tier 1 capital

Section 1

Form and nature of incentives to redeem

*Article 17*

*Form and nature of incentives to redeem under Article 52(1)(g) of Regulation (EU)  
No 575/2013*

1. Incentives to redeem shall mean all features that provide, at the date of issuance, an expectation that the capital instrument is likely to be redeemed.
  
2. The incentives referred to in paragraph 1 shall include the following forms:
  - (a) a call option combined with an increase in the credit spread of the instrument if the call is not exercised;
  - (b) a call option combined with a requirement or an investor option to convert the instrument into a Common Equity Tier 1 instrument where the call is not exercised;
  - (c) a call option combined with a change in reference rate where the credit spread over the second reference rate is greater than the initial payment rate minus the swap rate;
  - (d) a call option combined with an increase of the redemption amount in the future;
  - (e) a remarketing option combined with an increase in the credit spread of the instrument or a change in reference rate where the credit spread over the second reference rate is greater than the initial payment rate minus the swap rate where the instrument is not remarketed;
  - (f) a marketing of the instrument in a way which suggests to investors that the instrument will be called.

Section 2

Conversion or write-down of the principal amount

*Article 18*

*Nature of the write-up of the principal amount following a write-down under Article  
52(1)(n) of Regulation (EU) No 575/2013*

1. The write-down of the principal amount shall apply on a pro rata basis to all holders of Additional Tier 1 instruments that include a similar write-down mechanism and an identical trigger level.
  
2. For the write-down to be considered temporary, all of the following conditions shall be met:
  - (a) any distributions payable after a write-down shall be based on the reduced amount of the principal;
  - (b) write-ups shall be based on profits after the institution has taken a formal decision confirming the final profits;
  - (c) any write-up of the instrument or payment of coupons on the reduced amount of the principal shall be operated at the full discretion of the institution subject to the constraints arising from points (d) to (f) and there shall be no obligation for the institution to operate or accelerate a write-up under specific circumstances;
  - (d) a write-up shall be operated on a pro rata basis among similar Additional Tier 1 instruments that have been subject to a write-down;
  - (e) the maximum amount to be attributed to the sum of the write-up of the instrument together with the payment of coupons on the reduced amount of the principal shall be equal to the profit of the institution multiplied by the amount obtained by dividing the amount determined in point (i) by the amount determined in point (ii):
    - (i) the sum of the nominal amount of all Additional Tier 1 instruments of the institution before write-down that have been subject to a write-down;
    - (ii) the total Tier 1 capital of the institution.
  - (f) the sum of any write-up amounts and payments of coupons on the reduced amount of the principal shall be treated as a payment that results in a reduction of Common Equity Tier 1 and shall be subject, together with other distributions on Common Equity Tier 1 instruments, to the restrictions relating to the Maximum Distributable Amount as referred to in Article 141(2) of Directive 2013/36/EU, as transposed in national law or regulation.

3. For the purposes of point (e) of paragraph 2, the calculation shall be made at the moment when the write-up is operated.

#### *Article 19*

#### *Procedures and timing for determining that a trigger event has occurred under Article 52(1)(n) of Regulation (EU) No 575/2013*

The following procedures and timing shall apply for determining that a trigger event has occurred:

- (a) Where the institution has established that the Common Equity Tier 1 ratio has fallen below the level that activates conversion or write-down of the instrument at the level of application of the requirements as defined under Title II of Regulation (EU) No 575/2013, the management body or any other relevant body of the institution shall without delay determine that a trigger event has occurred and there shall be an irrevocable obligation to write-down or convert the instrument.
- (b) the amount to be written-down or converted shall be determined as soon as possible and within a maximum period of one month from the time it is determined that the trigger event has occurred;
- (c) the competent authority may require that the maximum period of one month referred to in point (b) is reduced in cases where it assesses that sufficient certainty on the amount to be converted or written down is established or in cases where it assesses that an immediate conversion or write-down is needed;
- (d) where an independent review of the amount to be written down or converted is required according to the provisions governing the Additional Tier 1 instrument, or where the competent authority requires an independent review for the determination of the amount to be written down or converted, the management body or any other relevant body of the institution shall see that this is done immediately. Any such review shall be completed as soon as possible and shall not create impediments for the institution to write-down or convert the Additional Tier 1 instrument and to meet the requirements of points (b) and (c) of this paragraph.

### Section 3

#### Features of instruments that could hinder recapitalisation

#### *Article 20*

#### *Features of instruments that could hinder recapitalisation under Article 52(1)(o) of Regulation (EU) No 575/2013*

Features that could hinder the recapitalisation of an institution shall include, in particular provisions that require the institution to compensate existing holders of capital instruments where a new capital instrument is issued.

#### Section 4

Use of special purposes entities for indirect issuance of own funds instruments

##### *Article 21*

*Use of special purposes entities for indirect issuance of own funds instruments under Article 52(1)(p) and Article 63(n) of Regulation (EU) No 575/2013*

The following treatment shall apply in the use of special purposes entities for indirect issuance of own funds instruments:

- (a) Where the institution or an entity within the consolidation pursuant to Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 issues a capital instrument that is subscribed by a special purpose entity, this capital instrument shall not, at the level of the institution or of the above-mentioned entity, receive recognition as capital of a higher quality than the lowest quality of the capital issued to the special purpose entity and the capital issued to third parties by the special purpose entity. Such requirement applies at the consolidated, sub-consolidated and individual levels of application of prudential requirements.
- (b) The rights of the holders of the instruments issued by the special purpose entity shall be no more favourable than if the instrument was issued directly by the institution or an entity within the consolidation pursuant to Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013.

#### Chapter 3

##### General requirements

##### Section 1

Indirect holdings arising from index holdings

##### *Article 22*

*Indirect holdings arising from index holdings- extent of conservatism required in estimates for calculating exposures used as an alternative to the underlying exposures under Article 76(2) of Regulation (EU) No 575/2013*

1. An indirect holding arising from an index holding comprises the proportion of the index invested in the Common Equity Tier 1, Additional Tier 1 and Tier 2

instruments of financial sector entities included in the index. For the purpose of this Article, an index includes, but is not limited to, index funds, equity or bond indices or any other scheme where the underlying instrument is a capital instrument issued by a financial sector entity.

2. Where the monitoring by an institution on an ongoing basis of its underlying exposures to the capital instruments of financial sector entities that are included in indices is deemed by the competent authority to be operationally burdensome, the institution may adopt a structure-based approach to estimating the value of the exposures.
3. When using a structure-based approach, an institution shall ensure in particular by means of the investment mandate of the index, that a capital instrument of a financial sector entity which is part of the index cannot exceed a maximum percentage of the index. This percentage shall be used as an estimate for the value of the holdings that shall be deducted from own funds.
4. In the event that an institution is unable to determine the maximum percentage as referred to in paragraph 3 and the index, in particular in accordance with its investment mandate, includes capital instruments of financial sector entities, the institution shall take into account the full amount of the index holdings for the deduction from own funds.
5. The deduction shall be operated on a corresponding deduction approach. In situations where the institution cannot determine the precise nature of the holding, the value of the holding shall be deducted from Common Equity Tier 1 capital.

#### *Article 23*

#### *Indirect holdings arising from index holdings- Meaning of operationally burdensome in Article 76(3) of Regulation (EU) No 575/2013*

1. For the purpose of Article 76(3) of Regulation (EU) No 575/2013, operationally burdensome shall mean situations under which look-through approaches to capital holdings in financial sector entities on an ongoing basis are unjustified, as assessed by the competent authorities. In their assessment of the nature of operationally burdensome situations, competent authorities shall take into account the low materiality and short holding period of such positions. A holding period of short duration shall require the strong liquidity of the index to be evidenced.

2. For the purpose of paragraph 1, a position shall be deemed to be of low materiality where all of the following conditions are met:
  - (a) the individual net exposure arising from index holdings measured before any look-through is performed does not exceed 2% of Common Equity Tier 1 items as defined in Article 46(1)(a) of Regulation (EU) No 575/2013;
  - (b) the aggregated net exposure arising from index holdings measured before any look-through is performed does not exceed 5% of Common Equity Tier 1 items as defined in Article 46(1)(a) of Regulation (EU) No 575/2013;
  - (c) the sum of the aggregated net exposure arising from index holdings measured before any look-through is performed and any other holdings that shall be deducted pursuant to Article 36(1)(h) of Regulation (EU) No 575/2013 does not exceed 10 % of Common Equity Tier 1 items as defined in Article 46(1)(a) of Regulation (EU) No 575/2013.

## Section 2

### Supervisory permission for reducing own funds

#### *Article 24*

#### *Meaning of sustainable for the income capacity of the institution under Article 78(1)(a) of Regulation (EU) No 575/2013*

Sustainable for the income capacity of the institution under Article 78(1)(a) of Regulation (EU) No 575/2013 shall mean that the profitability of the institution, as assessed by the competent authority, continues to be sound or does not see any negative change after the replacement of the instruments with own funds instruments of equal or higher quality, at that date and for the foreseeable future. The competent authority's assessment shall take into account the institution's profitability in stress situations.

#### *Article 25*

#### *Process and data requirements for an application by an institution to carry out redemptions, reductions and repurchases - under Article 77 of Regulation (EU) No 575/2013*

1. Redemptions, reductions and repurchases of own funds instruments shall not be announced to holders of the instruments before the institution has obtained the prior approval of the competent authority.

2. Where redemptions, reductions and repurchases are expected to take place with sufficient certainty, and once the prior permission of the competent authority has been obtained, the institution shall deduct the corresponding amounts to be redeemed, reduced or repurchased from corresponding elements of its own funds before the effective redemptions, reductions or repurchases occur. Sufficient certainty is deemed to exist in particular when the institution has publicly announced its intention to redeem, reduce or repurchase an own funds instrument.
3. This Article shall apply at the consolidated, sub-consolidated and individual levels of application of prudential requirements, where relevant.

#### *Article 26*

#### *Submission of application by the institution to carry out redemptions, reductions and repurchases under Article 77 of Regulation (EU) No 575/2013*

1. An institution shall submit an application to the competent authority before reducing or repurchasing Common Equity Tier 1 instruments or calling, redeeming or repurchasing Additional Tier 1 or Tier 2 instruments.
2. The application may include a plan to carry out actions listed in Article 77 of Regulation (EU) No 575/2013 for several capital instruments in the near future.
3. In the case of a repurchase of Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments for market making purposes, competent authorities may give their permission in advance to actions listed in Article 77 of Regulation (EU) No 575/2013 for a certain predetermined amount which shall not exceed the following:
  - (a) for Common Equity Tier 1 instruments, the lower of the following amounts:
    - (i) 3% of the amount of the relevant issuance;
    - (ii) 10% of the amount by which Common Equity Tier 1 capital exceeds the sum of the Common Equity Tier 1 capital requirements pursuant to Article 92 of Regulation (EU) No 575/2013, the specific own funds requirements referred to in Article 104(1)(a) of Directive 2013/36/EU and the capital conservation buffer and institution specific countercyclical capital buffer, the systemically important institution buffer and the systemic risk buffer referred to respectively in Articles 129, 130, 131(4), 131(5) and 133 respectively of that Directive;

- (b) for Additional Tier 1 instrument or Tier 2 instruments, the lower of the following amounts:
    - (i) 10% of the amount of the relevant issuance;
    - (ii) or 3% of the total amount of outstanding Additional Tier 1 instruments or Tier 2 instruments, as applicable.
- 4. Competent authorities may also give in advance their permission to actions listed in Article 77 of Regulation (EU) No 575/2013 where the related own funds instruments are passed on to employees of the institution as part of their remuneration. Institutions shall inform competent authorities where own funds instruments are purchased for these purposes and deduct these instruments from own funds on a corresponding deduction approach for the time they are held by the institution. A deduction on a corresponding basis is no longer required, where the expenses related to any action according to this paragraph are already included in own funds as a result of an interim or a year-end financial report.
- 5. A competent authority may give its permission in advance to an action listed in Article 77 of Regulation (EU) No 575/2013 for a certain predetermined amount when the amount of own funds instruments to be called, redeemed or repurchased is immaterial in relation to the outstanding amount of the corresponding issuance after the call, redemption or repurchase has taken place.
- 6. This Article shall apply at the consolidated, sub-consolidated and individual levels of application of prudential requirements, where relevant.

#### *Article 27*

#### *Content of the application to be submitted by the institution under Article 77 of Regulation (EU) No 575/2013*

- 1. The application referred to in Article 26 shall be accompanied by at least the following information:
  - (a) a well-founded explanation of the rationale for performing one of the actions referred to in paragraph 1 of Article 26;
  - (b) information on capital requirements and capital buffers, covering at least a 3 year period, including the level and composition of own funds before and after the performing of the action and the impact of the action on regulatory requirements;
  - (c) the impact on the profitability of the institution of a replacement of a capital instrument as specified in point (a) of Article 78(1) of Regulation (EU) No 575/2013;

- (d) an evaluation of the risks to which the institution is or might be exposed and whether the level of own funds ensures an appropriate coverage of such risks, including stress tests on main risks evidencing potential losses under different scenarios.
2. The competent authority shall waive the submission of some of the information listed in paragraph 2 in cases where it is satisfied that this information is already available to it.
3. This Article shall apply at the individual, consolidated and sub-consolidated levels of application of prudential requirements, where relevant.

#### *Article 28*

*Timing of the application to be submitted by the institution and processing of the application by the competent authority [Article 77 of Regulation (EU) No 575/2013]*

1. The institution shall transmit a complete application and the information referred to in Articles 26 and 27 to the competent authority at least 3 months in advance of the date where one of the actions listed in Article 77 of Regulation (EU) No 575/2013 will be announced to the holders of the instruments.
2. Competent authorities may allow institutions on a case-by-case basis and under exceptional circumstances to transmit the application referred to in paragraph 1 within a time frame shorter than the 3 months period.
3. The competent authority shall process an application during either the period of time referred to in paragraph 1 or during the period of time referred to in paragraph 2. Competent authorities shall take into account new information, where any is available and where they consider this information to be material, received during this period. The competent authorities shall begin processing the application only when they are satisfied that the information required under Article 25 has been received from the institution.

#### *Article 29*

*Applications for redemptions, reductions and repurchases by mutuals, cooperative societies, savings institutions or similar institutions under Article 77(b) of Regulation (EU) No 575/2013*

1. With regard to the redemption of Common Equity Tier 1 instruments of mutuals, cooperative societies, savings institutions or similar institutions, the application and information referred to in Articles 26 and 27 shall be

submitted to the competent authority with the same frequency as that used by the competent body of the institution to examine redemptions.

2. Competent authorities may give their permission in advance to an action listed in Article 77 of Regulation (EU) No 575/2013 for a certain predetermined amount to be redeemed, net of the amount of the subscription of new paid in Common Equity Tier 1 instruments during a period up to one year. This predetermined amount shall not exceed 2% of Common Equity Tier 1 capital.

### Section 3

#### Temporary waiver from deduction from own funds

##### *Article 30*

##### *Temporary waiver from deduction from own funds under Article 79(1) of Regulation (EU) No 575/2013*

1. 'Temporary' shall mean of a duration that does not exceed the timeframe envisaged under the financial assistance operation plan. The waiver shall not be granted for a period longer than 5 years.
2. The waiver shall apply only in relation to new holdings of instruments in the financial sector entity subject to the financial assistance operation.
3. For the purposes of providing a temporary waiver for deduction from own funds, a competent authority may deem the temporary holdings referred to in Article 79(1) of Regulation (EU) No 575/2013 to be for the purposes of a financial assistance operation designed to reorganise and save a financial sector entity where the operation is carried out under a plan and approved by the competent authority, and where the plan clearly states phases, timing and objectives and specifies the interaction between the temporary holdings and the financial assistance operation.

### **TITLE III**

#### **Minority interest and Additional Tier 1 and Tier 2 instruments issued by subsidiaries**

##### *Article 31*

*The type of assets that can relate to the operation of special purpose entities and meaning of minimal and insignificant regarding qualifying Additional Tier 1 and Tier 2 capital issued by special purpose entities under Article 83(1) of Regulation (EU) No 575/2013*

1. The assets of a special purpose entity shall be considered to be minimal and insignificant where both of the following conditions are met:
  - (a) the assets of the special purpose entity which are not constituted by the investments in the own funds of the related subsidiary are limited to cash assets dedicated to payment of coupons and redemption of the own funds instruments that are due;
  - (b) the amount of assets of the special purpose entity other than the ones mentioned in point (a) are not higher than 0.5% of the average total assets of the special purpose entity over the last three years.
2. For the purpose of point (b) of paragraph 1, the competent authority may permit an institution to use a higher percentage provided that both of the following conditions are met:
  - (a) the higher percentage is necessary to enable exclusively the coverage of the running costs of the special purpose entity;
  - (b) the corresponding nominal amount does not exceed EUR 500 000.

#### **TITLE IV**

#### **Specification of the transitional provisions of Regulation (EU) No 575/2013 in relation to Own Funds**

##### Chapter 1

##### Own funds requirements, unrealised gains and losses measured at fair value and deductions

##### *Article 32*

##### *Additional filters and deductions under Article 481(1) of Regulation (EU) No 575/2013*

The adjustments to Common Equity Tier 1 items, Additional Tier 1 items and Tier 2 items, according to Article 481 of Regulation (EU) No 575/2013, shall be applied as follows:

- (a) Where, under the transposition measures of the Directive 2006/48/EC and the Directive 2006/49/EC, those deductions and filters result from own funds items as referred to in Article 57(a) to (c) of Directive 2006/48/EC, the adjustment shall be made to Common Equity Tier 1 items.

- (b) In cases other than those covered by point (a), and where, under the transposition measures of the Directive 2006/48/EC and the Directive 2006/49/EC, these deductions and filters have been applied to the total of the items as referred to in Article 57(a) to (ca) of the Directive 2006/48/EC, taking into account Article 154 of that Directive, the adjustment shall be made to Additional Tier 1 items.
- (c) Where the amount of Additional Tier 1 items is lower than the related adjustment, the residual adjustment shall be made to Common Equity Tier 1 items.
- (d) In cases other than those covered by points (a) or (b), and where under the transposition measures of the Directive 2006/48/EC and the Directive 2006/49/EC, these deductions and filters have been applied to own funds items as referred to in Article 57(d) to (h) or total own funds of Directive 2006/48/EC and Directive 2006/49/EC, the adjustment shall be made to Tier 2 items.
- (e) Where the amount of Tier 2 items is lower than the related adjustment, the residual adjustment shall be made to Additional tier 1 items.
- (f) Where the amount of Tier 2 and Additional Tier 1 items is lower than the related adjustment, the residual adjustment shall be made to Common equity Tier 1 items.

## Chapter 2

### Grandfathering of capital instruments for elements not constituting State Aid

#### *Article 33*

*Items excluded from grandfathering in Common Equity Tier 1 or Additional Tier 1 items in other elements of own funds under Article 487(1) and (2) of Regulation (EU) No 575/2013*

1. Where treating own funds instruments referred to in paragraphs 1 and 2 of Article 487 of Regulation (EU) No 575/2013 as falling under Article 486(4) or 486(5) of that Regulation during the period from 1 January 2013 to 31 December 2021, instruments may be reclassified either in whole or in part. Any reclassification shall have no effect on the calculation of the limit as specified in Article 486(4) of Regulation (EU) No 575/2013.
2. Own funds instruments referred to in paragraph 1 may be reclassified as items referred to in Article 484(3) and 484(4) of Regulation (EU) No 575/2013 provided that their amount no longer exceeds the applicable percentages referred to in Articles 486(2) and 486(3) of that Regulation respectively.

## **TITLE V**

### **Final provisions**

#### *Article 34*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*  
*The President*

*[For the Commission*  
*On behalf of the President*

*[Position]*